

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

ORIGINAL

In re Applications of

JOHN M. GIANNETTINO

JOHN T. PRITCHARD

For New FM Broadcast Station
on Channel 276C3 at
Burlington, Iowa

MM Docket No. 92-302

FCC File No. BPH-910719MA

FCC File No. BPH-910722MI

RECEIVED

JAN 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Honorable Richard Sippell
Administrative Law Judge

**JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT AND FOR GRANT OF APPLICATION**

John M. Giannettino ("Giannettino") and John T. Pritchard ("Pritchard"), pursuant to Section 73.3525 of the Commission's Rules, hereby respectfully request approval of the attached Settlement Agreement (the "Agreement"). See Exhibit A hereto. The Agreement contemplates the voluntary dismissal of the Giannettino application, in consideration of the monetary payments to Giannettino set forth therein. The parties also request that the Commission expeditiously complete its processing of, and grant, of the Pritchard application. However, the approval and payment of the settlement is not contingent on grant of the Pritchard application, but instead only on dismissal of the Giannettino application.

1. Giannettino and Pritchard filed mutually exclusive applications for a construction permit for a new FM broadcast station at Burlington, Iowa. Giannettino and Pritchard have entered into the attached Agreement, which contemplates the

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46

dismissal with prejudice of the Giannettino application, in return for monetary payment reimbursing Giannettino for his expenses, as permitted by FCC rules. The Agreement is executed by both parties. Effectiveness of the Agreement is expressly conditioned upon prior Commission approval thereof, and dismissal of the Giannettino application. Effectiveness of the Agreement is not contingent upon grant of the Pritchard application.

2. Giannettino and Pritchard, in declarations attached as Exhibits B and C, respectively, have stated under penalty of perjury that neither party filed his application for the purpose of negotiating or reaching a settlement agreement, and state why the approval of the Agreement serves the public interest. Approval of the Agreement, and dismissal of the Giannettino application, will simplify this proceeding and speed its resolution. Giannettino's declaration, Exhibit B, also provides an itemization of the expenses he has incurred in the prosecution of his application. This demonstrates that the sum he will be paid is less than his out-of-pocket expenses incurred in the filing, preparation and prosecution of his application.

3. Approval of this settlement will be in the public interest as it will simplify the hearing process, and eliminate unnecessary litigation -- conserving the resources of both the parties and the Commission. Thus, the agreement should be approved.

For all the above reasons, Giannettino and Pritchard respectfully request that the Commission approve the Settlement Agreement, dismiss, with prejudice, the application of

Giannettino, and, as soon as possible, grant the pending application of Pritchard.

Respectfully submitted,

JOHN M. GIANNETTINO

By David D. Oxenford

His Attorney

FISHER, WAYLAND, COOPER
& LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

JOHN T. PRITCHARD

By Donald E. Ward

His Attorney

Donald E. Ward, Esq.
1201 Pennsylvania Avenue, N.W.
Fourth Floor
Washington, D.C. 20004

Date: January 12, 1993

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this 9th day of January, 1993, by and between JOHN M. GIANNETTINO ("Giannettino") and JOHN T. PRITCHARD ("Pritchard") (collectively, the "Parties").

WHEREAS, Giannettino has applied to the Federal Communications Commission (the "Commission") for authority to construct a new FM broadcast station (the "Station") on Channel 276C3 at Burlington, Iowa (FCC File No. BPH-910719MA, the "Giannettino Application"); and

WHEREAS, Pritchard has applied to the Commission for authority to construct facilities on the same channel (FCC File No. BPH-910722MI, the "Pritchard Application"); and

WHEREAS, the Parties' applications are mutually exclusive with each other; and

WHEREAS, the Parties wish to avoid further costly and additional lengthy proceedings before the Commission and possibly the courts, as well as the burden that such proceedings impose upon the Commission's and the courts' staffs and resources; and

WHEREAS, the Parties believe that this Agreement will be in the public interest in that it will resolve the pending proceeding before the Commission, and thereby permit the more prompt initiation of a new FM broadcast service to the community of Burlington, Iowa; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Commission and the conditions herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

-2-

1. The Parties will file a joint petition ("Joint Petition") with the Commission pursuant to Section 73.3525 of the Commission's Rules which requests that the Commission:

- (a) approve this Agreement;
- (b) dismiss the Giannettino Application with prejudice; and
- (c) grant the Pritchard application (although this is not a condition precedent to the approval of (a) and (b), above.

The Parties shall file with the Joint Petition a copy of this Agreement together with all supporting documentation required by Section 73.3525 of the Commission's Rules. Each party will also separately file a request for refund of its Hearing Fee.

2. Pritchard agrees to pay Giannettino, by certified or cashier's check or by wire transfer to Giannettino, as consideration for the foregoing and for the performance of the obligations of Giannettino hereunder, the sum of TWENTY THOUSAND DOLLARS (\$20,000.00), or such lesser amount that Giannettino demonstrates to the Commission is the total amount of the bona fide expenses (excluding the Hearing Fee) which Giannettino has incurred directly in connection with the preparation, filing and prosecution of his application, and in connection with settlement negotiations, to which he is entitled to reimbursement under Commission rules and policies (the "Settlement Sum"). Pritchard shall cause the Settlement Sum to be placed in a mutually agreeable Escrow Account within five (5) business days of the execution of this Agreement. If the Escrow payment is not made when due, this Agreement can be terminated at will by Giannettino. Payment of the

Settlement Sum to Giannettino shall be made within three (3) business days following the date on which an order or opinion of the Commission dismissing the Giannettino Application becomes a Final Order. For purposes of this Agreement, a "Final Order" is an order that is no longer subject to administrative or judicial reconsideration, review, appeal or stay under applicable statutes and regulations. The parties agree that, absent appeal or stay, an order of an Administrative Law Judge approving this agreement shall become Final thirty (30) days after the order is released by the Commission. Effectiveness of this Settlement Agreement shall not be contingent upon a grant of the Pritchard Application.

3. No payments, other than the Settlement Sum specified in Paragraph 2, shall be made to Giannettino, and such sum shall be due only upon the third (3rd) business day following finality of a dismissal of the Giannettino Application.

4. Recognizing that this Agreement is expressly subject to the prior consent of the Commission and the need for Commission approval prior to its consummation, Giannettino and Pritchard shall cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be necessary or appropriate to comply with Section 73.3525 of the Commission's Rules. The Parties agree to provide the Commission in a timely manner with such information as it reasonably requests. The Parties further agree to use their best efforts in the preparation and filing of all Commission applications and related documents that may be necessary or appropriate to reach the result contemplated by Paragraph 1 of

this Agreement. Giannettino agrees that he will provide all documentation necessary to support his request for reimbursement.

5. The obligations of the Parties are expressly conditioned upon Commission approval of this Settlement Agreement and its dismissing the Giannettino Application with prejudice, and upon such actions becoming a Final Order within the meaning of Paragraph 3. In the event these actions do not become a Final Order within one year from the date of submission of this Settlement Agreement and the Joint Petition to the Commission, either party may, at its option, terminate this Agreement, and in that event the proceeding will be restored to its prior status.

6. This Agreement is the only agreement between the Parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof and cannot be amended or modified except by an instrument in writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns. Each party warrants to the other that he has full power and authority to enter into this Agreement, and to perform his obligations hereunder. The Parties further represent and warrant that they are not under any restrictions, contractual or otherwise, which prevent or preclude them from entering into this Agreement and from carrying out their obligations hereunder.

7. The Parties agree that this Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

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8. This Agreement shall be construed under the laws of the State of Iowa.

9. Specific performance shall be available as a remedy for breach of this Agreement in addition to other legal or equitable remedies available under this Agreement or under the laws of the State of Iowa.

10. A notice, request, statement or other communication to be given hereunder will be in writing and will be sent by first-class mail, postage prepaid to the party as follows:

If to Giannettino:

John M. Giannettino
P.O. Box 946
Burlington, Iowa 52601

with a copy to:

David D. Oxenford, Esq.
Fisher, Wayland, Cooper and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

If to Pritchard:

John T. Pritchard
2212 Piper Place, Apt. 1
Burlington, Iowa 52601

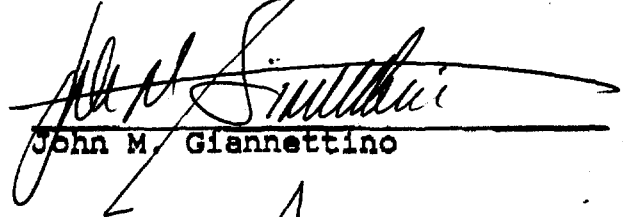
with a copy to:

Donald E. Ward, Esq.
1201 Pennsylvania Avenue, N.W.
Fourth Floor
Washington, D.C. 20004

or to such other address or to such other person as either party may designate by notice given in writing. Any notice, request, statement, or other communication will be deemed to have been given three days after it was mailed.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.

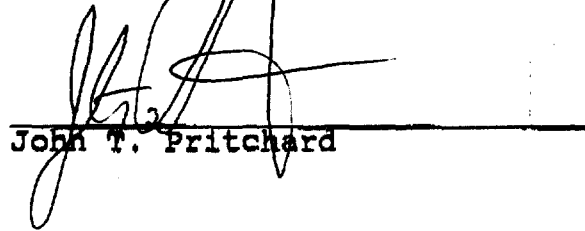
JOHN M. GIANNETTINO



John M. Giannettino

Date: JAN 9, 1993

JOHN T. PRITCHARD



John T. Pritchard

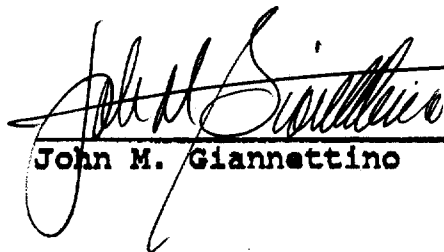
Date: JAN. 9, 1993

EXHIBIT B

DECLARATION

I, John M. Giannettino, hereby declare under penalty of perjury:

1. I am an applicant for a new FM station at Burlington, Iowa.
2. My application was not filed for purposes of reaching a settlement.
3. Other than the consideration set forth in the Settlement Agreement with John T. Pritchard, I have been neither promised nor paid any consideration for the dismissal of my application.
4. Approval of the Settlement Agreement would be in the public interest as it will expedite the provision of an important new broadcast service to Burlington, Iowa.
5. An itemization of the expenses which I incurred in the preparation and prosecution of my application are attached hereto.



John M. Giannettino

Date: January 9, 1993

Expense Itemization for John Giannettino
Re: Channel 276 C3, Burlington, Iowa.

ENGINEERING: (Paid accounts)

7/18/90 Harvest Communications.....CK#3662.....\$ 250.00
(Datavorld frequency search)
10/4/90 Harvest/Duane Polich..... #3790.....\$ 250.00
(Petition for Rulemaking)

5/7/91 P-N-P Broadcasting#4483.....\$ 25.00
(Eng. Expenses)
6/14/91 P-N-P Broadcasting#4568.....\$ 25.00
(Eng. Expenses)
7/16/91 John Allen#4697.....\$ 405.00
(Airspace Consult/F.A.A. study)

ENGINEERING: (Outstanding accounts)

1. Castelli Engineering
Total Cost.....\$1988.42
-Transmitter location search
-Preliminary interference maps
-Preliminary site selection
-Engineering consulting
2. Communications Engineering Services
Total Cost.....\$4260.16

-Review of Prelim. site material
Preparation of FM application & Exhibits
-Final FM spacing study, interference maps
-Population counts & coverage maps
-Advise & Consult on Pritchard App.

Legal Services: (Paid accounts)

6/4/91 Holland & Knight.....CK#4568.....\$ 50.00
(Legal Opinion)
10/12/92 Meck AccountingCK#6475.....\$ 100.00
(Review tax implications of settlement offer)
11/10/92 Beckman, Hirsch, & Ell.....CK#5562/5585.....\$ 280.20
(Opinion on settlement offer paperwork)

Legal Services: (Outstanding accounts)

1. Fisher, Wayland, Cooper, & Leader
(Legal Services from App to settlement)...\$7360.52
-Application preparation
Draft and review various settlement offers
-Legal Services and Opinions

FM EXPENSES CONT'D.

Miscellaneous Expenses (Paid Accounts)

7/1/91	American Investigation Agency...#4654.....	\$ 70.20
	(research and investigate competitor)	
7/1/91	Mileage for site selection....#cash.....	\$ 33.60
	(.28cents @ 120 miles)	
7/3/91	JSJ, Inc.....#4710.....	\$ 200.00
	(land option fee for transmitter site)	
7/18/91	F.C.C. Application Fee.....#4702.....	\$2030.00
	(form 301)	
8/15/91	Hawkeye Newspaper.....#4912.....	\$ 17.59
	(public notices as required)	
5/28/92	Electronic Seminars.....#6092.....	\$ 100.00
	(FM equipment research)	
9/24/92	Chris Chriddenden.....#6451.....	\$ 160.00
	(Reference Room research)	
9/22/91	Auto Travel to Wash D.C.....#various.....	\$ 529.20
	(conference Attorney Oxenford 1890 miles @.28per)	
9/22/91	Lodging for Wash D.C. meeting.#various.....	\$ 185.00
	(two nights each way - (4) @ 46.25)	
9/91	Meals (5) days @ 25.00 per day.....	\$ 125.00
9/22/91	Parking in Wash D.C.....#cash.....	\$ 10.00
	(paid parking)	
7/90-1/93	Long Distance Phone/Fax charges (31 months @avg. \$19.75 per month).....#various.....	\$ 612.25
6/91-1/93	Federal Express.....#various.....	\$ 165.00
	(eleven deliveries @ 15.00ea.)	
6/91-1/93	Postage.....#various.....	\$ 61.95
	(mail costs)	
6/91-1/93	Copies...@.10cents ea.....	\$ 47.50
6/91-1/93	Map Copies ..@.50 cents ea.....	\$ 6.00
9/16/92	Auto travel to Wash D.C.....#various.....	\$ 534.80
	(Conf. Oxenford/Ref. Room Research 1910 miles@.28)	
9/16/92	Lodging for Wash D.C. trip..#various.....	\$ 185.00
	(4 nights, two each way @46.25)	
9/92	Meals (5) days @ 25.00 per day.....	\$ 125.00
9/17/92	Parking Wash D.C.....#cash.....	\$ 8.00
	(paid parking @ Citipark)	
Misc1. Mileage to and from settlement conferences with Pritchard, and research in Galesburg, IL .@.28cents.		\$ 49.00

TWO PAGE TOTAL...\$20,249.39
thru Jan 8, 1993.

HARVEST COMMUNICATIONS LTD.

TELECOMMUNICATIONS CONSULTANTS

P.O. Box 1002
AMHERST, NH 03031
PHONE (603) 429-8199

*Ch
sent
7/18/90
\$250.*

July 12, 1990

Chip Giannettino
Box 946
Burlington, IA 52601

Dear Chip,

This letter will confirm your request for Harvest Communications to conduct an indepth frequency search for Burlington, IA.

The total cost of this project is \$250.00. As agreed, please send the full amount by return mail.

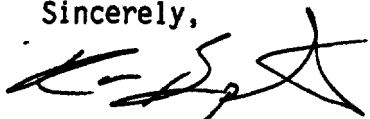
If we are successful in finding an acceptable class A, class C1 or class C2, you may direct this firm to also submit a rulemaking to the Federal Communications Commission on your behalf for an additional \$250.00.

The following are the names and telephone numbers of two former clients which you may feel free to contact:

- 1) Chief Justice Robinson Everett
202-272-1461 Washington, D.C.
- 2) George Klein
516-581-0346 New York state

Thanks for your confidence in Harvest Communications.

Sincerely,



Ron Baptist
President

RDB/ps

pd. check 370
9/4/90
\$250

John M. Giannettino
KCPS Radio
Box 946
Burlington, Iowa 52601

HARVEST COMMUNICATIONS LTD.

TELECOMMUNICATIONS CONSULTANTS

P.O. Box 1002
AMHERST, NH 03031
PHONE (603) 429-8199

INVOICE

Quantity	Description	Unit price	Amount
1	<p>FOR SERVICES RENDERED IN :</p> <p>FREQUENCY SEARCH FOR FM CHANNEL AT BURLINGTON, IA.</p> <p>PREPARATION OF PETITION FOR RULEMAKING TO ALLOCATE FM CHANNEL 276C3 TO BURLINGTON</p> <p>LESS PAYMENT RECEIVED</p> <p>TOTAL AMOUNT DUE</p> <p>TERMS: Payable upon receipt of invoice.</p> <p>Please remit payment to: Duane J. Polich 5550 35th Ave N.E. Seattle, WA. 98105</p> <p>Please make check payable to: Harvest Communications, Ltd./ P-N-P Broadcasting, Inc.</p> <p>THANKS FOR USING HARVEST COMMUNICATIONS WE APPRECIATE YOUR BUSINESS!</p>		<p>500. 00</p> <p>- 250. 00</p> <p>250. 00</p>
		SUB TOTAL	
		TAX	
		TOTAL	250. 00

PD

INVOICE

P-N-P BROADCASTING, INC.
5550 35TH AVE N.E.
SEATTLE, WA 98105

BILL TO: JOHN "CHIP" GIANNETTINO
KCPS RADIO
BOX 946
BURLINGTON, IA 52601

FOR SERVICES RENDERED IN CONNECTION WITH TELEPHONE
CONSULTATION ON NEW FM ALLOTMENT AT BURLINGTON, IOWA.

TOTAL TIME: 1/2 HALF HOUR @ \$ 50.00 PER HOUR. \$25.00

TOTAL AMOUNT DUE: \$25.00
=====

PLEASE MAKE CHECK PAYABLE TO P-N-P BROADCASTING, INC. AND REMIT
TO ABOVE ADDRESS.

KCPS 1150

RADIO BURLINGTON

SANDCASTLE ENTERTAINMENT
P. O. BOX 948 PH. 318-754-6088
BURLINGTON, IA 52601

4597

72-2151/739

PAY
TO THE
ORDER OF

P-N-P BROADCASTING (DUANE POLICH) 6/14 19 91 \$ 25.00

twenty five

DOLLARS

First National Bank

BI A BANKS OF IOWA BANK
Burlington, Iowa 52601

FOR

[Signature]

⑈004597⑈ ⑈073921514⑈ 065 274 3⑈

John P. Allen

Airspace Consultant

Telephone
(904) 261-6523
FAX (904) 277-3651

P.O. Box 1008
Fernandina Beach, Florida 32034

July 8, 1991

Mr. Chip Giannettino
P. O. Box 946
Burlington, IA 52601

RE: BURLINGTON, IA - PROPOSED FM FACILITY - 103.1 MHz

STATEMENT FOR SERVICES

AERONAUTICAL EVALUATION: \$450.00

EXPENSES: \$0.00

CURRENT BALANCE: \$450.00

PA 7/16/91

TERMS: Statements paid within (10) days of statement date qualify for a (10) percent discount. Statements are payable within (30) days of statement date. Statements that have not been paid within (30) days of statement date will incur a (1.5) percent service charge.

NOTE: DISCOUNT DOES NOT APPLY TO EXPENSE

CASTELLI ENTERPRIZES

P.O. Box 68

Burlington, IA 52601

31 December 1992

To Whom it may concern,

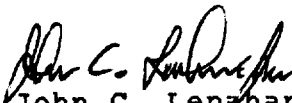
I John C. Lenahan, Jr. declare under penalty of perjury have performed engineering services in connection with channel 276C3, Burlington, IA for John M. Giannettino totaling \$1988.42.

Consulting/engineering services for
transmitter site comparisons,
interference/city grades and
coverage studies.

\$1800.00

Mileage, copies, postage etc.

\$188.42



John C. Lenahan, Jr.

510-54-7847

Owner, Castelli Enterprizes

JAN 12 '93 12:17PM SENT BY FISHER WAYLAND

P.2/2

DECLARATION

I, Richard L. Biby, hereby declare under penalty of perjury that Communications Engineering Services, P.C. has charged John M. Giannettino \$4,260.16 for engineering services in connection with his application for a new FM station at Burlington, Iowa. This is a reasonable and customary charge for similar services performed for FM applicants. Our services include the following:

Review of FM site location; Preparation of FCC Form 301 engineering material; Review of Competing Application; Review of Comparative Coverage and FAA matters; Telephone conversations with the applicant and counsel.


Richard L. Biby, P.E.

Date: January 12, 1993

DECLARATION

I, David D. Oxenford, hereby declare under penalty of perjury:

1. I am a Partner in the law firm of Fisher, Wayland, Cooper and Leader.
2. Our firm has represented John M. Giannettino in connection with his application for a new FM station at Burlington, Iowa. He has incurred legal fees in the amount of \$7360.52 in connection with that application.
3. The services were charged at our normal and customary rates.
4. The services we performed on his behalf included the following:

discussions of the Form 301 application, preparation of the Form 301 application, filing of the 301 application, preparation of the public file and public notice instructions, review of competing application, discussions of competing application, discussions of investigations of competing applicant, discussions of Petition to Deny filed against competing applicant, meetings with Giannettino to discuss competing applicant and settlement proposals, review of settlement proposals, review of Hearing Designation Order, discussion of various prosecution options, preparation of settlement documents, filing of settlement documents.



David D. Oxenford

Dated: January 11, 1993

6475

KCPS 1150
 RADIO BURLINGTON
 SANDCASTLE ENTERTAINMENT
 P. O. BOX 948 PH. 318-754-0989
 BURLINGTON, IA 52601

OCT 12 19 92 72-2151/739

PAY TO THE ORDER OF Meck Accounting **PAID** \$ 100

One hundred OCT 13 92 DOLLARS

FIRSTSTAR BANK
 BURLINGTON, N.A.
 Burlington, IA 52601

FOR Meck Accounting

⑈006475⑈ ⑆073921514⑆ 065 274 3⑈ ⑈0000010000⑈

5562

KCPS 1150
 RADIO BURLINGTON
 SANDCASTLE ENTERTAINMENT
 P. O. BOX 948 PH. 318-754-0989
 BURLINGTON, IA 52601

November 10 19 92 72-2151/739

PAY TO THE ORDER OF BECKMAN HIRSCH ELL **PAID** \$ 140.10

One hundred forty & 10/100 NOV 13 92 DOLLARS

FIRSTSTAR BANK
 BURLINGTON, N.A.
 Burlington, IA 52601

FOR ON ACCT. FM 1/2 payment

⑈005562⑈ ⑆073921514⑆ 065 274 3⑈ ⑈0000014010⑈

5585

KCPS 1150
 RADIO BURLINGTON
 SANDCASTLE ENTERTAINMENT
 P. O. BOX 948 PH. 318-754-0989
 BURLINGTON, IA 52601

11/20 19 92 72-2151/739

PAY TO THE ORDER OF Beckman Hirsch, ELL **PAID** \$ 140.10

One hundred forty & 10/100 NOV 24 92 DOLLARS

FIRSTSTAR BANK
 BURLINGTON, N.A.
 Burlington, IA 52601

FOR FM CAST payment

⑈005585⑈ ⑆073921514⑆ 065 274 3⑈ ⑈0000014010⑈

AMERICAN INVESTIGATION AGENCY
R2 BOX 126-C, BURLINGTON, IOWA 52601 U.S.A.

Theodore A. Behne
Chief of Investigations
Illinois & Iowa
Licensed & Bonded

Office: (319)753-2192
Mobile Telephone &
Answering Service:
(319)753-1525, Unit 500

To: Mr. John (Chip) M. Giannettino
AM Radio Station KCPS
408 N. Main St.
Burlington, Iowa 52601

Date: June 28, 1991

Due Date: July 12, 1991

Re: FM radio license investigation

-----INVOICE-----

	Amount	Balance Due
6/24/91 1.5 hours @ \$45/hour	67.50	67.50
Iowa tax @ 4%	2.70	70.20

JSJ, INC.

"the People company"

P.O. BOX 965 • BURLINGTON, IOWA 52601 • (319) 753-1667

ORDER NUMBER	SALESMAN	INVOICE DATE	ACCOUNT NO.	SHIPPED VIA:	INVOICE NUMBER
		1/8/93			010393

SOLD TO: KCPS Radio
408 N. Main St.
Burlington, Iowa 52601

SHIPPED TO:

QUANTITY	PRODUCT CODE	DESCRIPTION	UNITS	UNIT PRICE	AMOUNT	
		Option for Land Hwy 34 West West Burlington, Iowa			200.00	
CASH DISCOUNT		IF PAID BY	NO DISCOUNT ALLOWED ON CONTAINERS, TAX OR DELIVERY CHARGES		INVOICE TOTAL	200.00

NET 30 DAYS